17 years of age. *Accord* with the principal case, see *Federal Rubber Mfg. Co.* v. *Havolic,* 162 Wis. 341; *Ballard's Adm'x* v. *Ry. Co.,* 128 Ky. 826; *Tarpper* v. *Weston-Mott Co.,* 200 Mich. 275. *Contra, Robinson* v. *Melville Mfg. Co.,* 165 N. C. 495. The case of *In re Loper* (Ind., 1917), 116 N. E. 324, would seem to be distinguishable on the ground that the employer knew of the practice of committing pranks with the air hose.

WORKMEN'S COMPENSATION—LIABILITY OF EMPLOYER FOR UNSKILFUL TREATMENT OF EMPLOYEE BY PHYSICIAN.—Employee fractured his leg and was taken by his employer to a hospital, where the leg was set. The union of the fracture was made by overlapping the fragments, making the leg four inches shorter. To correct this vicious union the employee had the usual operation performed, but no union then took place, and from necessity the leg was amputated. In a claim for compensation, *held,* the employee suffered the loss of a leg as a result of his injuries and was entitled to compensation for that loss. *Booth & Flinn* v. *Cook* (Okla., 1920), 193 Pac. 36.

Where death or an aggravation of the injury results to the employee from an operation or medical treatment made necessary by an injury, the question is often raised as to the liability of the employer. In cases where the medical attendant is guilty of neither negligence nor malpractice, the courts appear to concur in making the employer compensate for that death or aggravation. Thus, where a workman died from the effects of an operation conducted skilfully, it was found that he was injured by an accident making the operation necessary and that death resulted from an injury, and compensation was given accordingly. *Lewis* v. *Port of London Authorities* [1914], W. C. & Ins. Rep. 299. So, too, where an injury to the employee's finger caused gangrene, making two operations necessary, and the second operation,, conducted skilfully, resulted in pneumonia caused by the anaesthetic, it was held that the accidental injury was the proximate cause of death and compensation was granted. *Favro* v. *Board of Public Library Trustees,* 1 Cal. Ind. Acc. Com. Dec. 1. And where an employee's arm was cut by a saw, necessitating an immediate operation without time to prepare the patient for ether, and as a result he contracted ether pneumonia and died, compensation was given. *In re Raymond,* Mass. Work's Comp. Rep. (1913) 277. Where the malpractice of the medical attendant causes death or aggravates the injury of the employee, a few cases, including the English decisions, do not hold the employer liable for such increase of incapacity. Thus, where the employee broke his arm and, owing to unskilful medical treatment at a hospital to which his employer sent him, his arm did not and could not completely recover, the employer was not held liable for the unskilful treatment and compensation for this further injury was denied. *Della Rocca* v. *Stanley Jones & Co.,* 6 N. C. C. A 624. The court there based its decision on the ground that the injury resulting from the malpractice cannot be traced back to the first injury, but a new agency, malpractice, had intervened, for which the employer is not liable. In *Viita* v. *Fleming,* 132 Minn. 128, the question arose whether settlement by the employer, releasing himself from all claims

on account of the injury, also released the defendant doctor from liability for malpractice. It was held that the employer was not liable for disability caused by the negligence of the doctor, and so the settlement did not extinguish the employee's claim against the doctor for malpractice. But the great weight of authority, that the employer is liable for the results of malpractice, seems the better view. Thus, it has been held that an employer failing to provide medical attention is liable to compensate for the loss of an employee's eye caused by the negligence and incompetence of a practitioner selected by the employee. *Stockwell* v. *Waymire*, 1 Cal. Ind. Acc. Com. Dec. (part 2) 225. At common law the employer was not liable to an injured employee for the negligence or malpractice of a physician called by the employer, if he was not negligent in selecting an incompetent physician. *Boring* v. *Chicago R. Co.*, 110 N. E. 545. But liability under the Compensation Acts is not based upon negligence. The theory of the act is that injuries are an element of the cost of production and should be charged to the industry. So whenever the immediate agency causing death or further injury is one which the first injury made it necessary to employ, the employer should be compelled to compensate for the resulting death or further injury. The principal case is in accord with this doctrine and rests upon the better reasoning. Even where the employee had rejected the medical treatment offered by the employer, nevertheless the employer was held liable for lung trouble caused by the negligence of a physician chosen by the employee. *Salvatore* v. *New England Casualty Co.*, 2 Cal. Ind. Acc. Comm. Dec. 355, the court saying: "An industry is liable for all legitimate consequences following an accident, among which consequences affecting the extent of the disability is the possibility of error of judgment or unskilfulness on the part of any attending physician, whether called by the employer or employee."